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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,895	07/24/2001	GERALD ANTON OFNER	046-7001.30	3043

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EXAMINER

FINEMAN, LEE A

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/889,895	Applicant(s) OFNER, GERALD ANTON	
	Examiner Lee Fineman	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6-62,64 and 65 is/are pending in the application.
- 4a) Of the above claim(s) 6-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,62,64 and 65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/24/01, 4/30/03, 1/7/05, 2/6/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to remarks filed 9 August 2006. Claims 1, 6-62, 64 and 65 are pending of which claims 6-61 are withdrawn.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 64 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al., US 6,134,048 in view of Austrian Patent Publication No. AT 000307 U1 (henceforth AT-307) and Kawamura, US 6,671,087.

Kato et al. disclose a vision aid (figs. 19A and 19B) in the form of telescopic spectacles with two lens systems which each comprise at least one objective lens (39 or 40) and one eyepiece (5 or 6) having an internal beam path therebetween (figs. 19A and 19B); a focusing means (13) which changes the focal length to adjust the lens systems according to the distance of the telescopic spectacle from the object (column 10, lines 33-40), and at least one optical element (41 or 42) that is distinct from said at least one objective lens and said eyepiece (it is distinct in at least so far as it is physically separated from the other lenses) positioned and arranged to match parallaxes between the lens systems of the vision aid to the focal length which has been set according to the distance of the telescopic spectacles from an object (column 10, lines 44-50),

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such that in each said lens system, said at least one optical element is movable along a guide (37 or 38) so as to follow a path that crosses said internal beam path for changing an angle between external beam paths which run out of the respective lens systems toward the object; and wherein said at least one optical element is structured and arranged to match parallaxes without changing distance between respective eyepieces (figs. 19A and 19B). Kato et al. disclose the claimed invention except for path/guides being curved; a means for changing the magnification factor of the lens systems and the focusing means being an autofocusing means. Kawamura teaches a binocular system (figs. 17-19) that adjusts parallax wherein an optical element (2 or 3) is movable along a curved guide (76A or 76B) so as to follow a curved path (see column 15, line 34-column 16, line 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the curved guide/curved path taught by Kawamura into the system of Kato et al. to provide an alternative path which maintains image placement at various object distances while preventing fatigue and feelings of unease (Kawamura, abstract and column 2, lines 27-45). AT-307 teaches telescopic spectacles with two lens systems (fig. 1) with a means for changing the magnification factor of the lens systems (13, 14) and an autofocusing means (4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the means for changing the magnification factor of AT-307 to the system of Kato et al. to provide the viewer with more flexibility in viewing the image with a broader range of magnifications and to make the focusing mean of Kato et al. an autofocusing means as suggested by AT-307 to provide fast, accurate focusing of the object.

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3. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al. in view of Kawamura and AT-307 as applied to claim 1 above, and further in view of Kanda, US 4,886,340.

Kato et al. in view of Kawamura and AT-307 as applied to claim 1 above discloses the claimed invention except for wherein in each said lens system, the at least one optical element is rotatable along an axis perpendicular to said curved path so that said at least one optical element tilts when said at least one optical element is moved along said curved path. Kanda teaches a vision aid (fig. 5) in the form of telescopic spectacles with two lens systems with an optical element (5) that is movable along a curved path (from connector 13) and wherein said optical element is rotatable along an axis perpendicular to said curved path so that said at least one optical element tilts when said at least one optical element is moved along said curved path (column 7, lines 23-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the optical element of Kato et al. in view of Kawamura and AT-307 rotatable along an axis perpendicular to said curved path for tilting as suggested by Kanda to provide additional degrees of freedom in designing/aligning the lens system.

Response to Arguments

4. Applicant's arguments filed 9 August 2006 have been fully considered but they are not persuasive.

Applicant argues that modifying Kato et al. in the manner suggested disregards the claimed invention as a whole because the movable elements are either the objective lenses or the eyepiece and points to fig. 1A of Kato et al. as evidence. The examiner respectfully disagrees

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and points out that the rejection is based on figs. 19A and 19B, which includes a distinct optical element (41 and 42) in at least so far as it is physically separated from the other lenses and therefore properly meets the claimed language of at least one objective (39 or 40) and one eyepiece (5 or 6) and one distinct optical element (41 and 42).

Applicant further argues that one would not have looked to Kawamura to modify Kato et al. because it is only a single lens system with virtual images while Kato et al. is a multi-lens system with real images. The examiner respectfully disagrees. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Kawamura and Kato et al. are concerned with correcting the problem of parallax.

Applicant also argues that the motivation of preventing fatigue and feeling of unease are based on the virtual system of Kawamura and not appropriate for a real image system. The examiner respectfully disagrees. Parallax is a problem that occurs when looking at images with each eye and it does not matter whether it is a real or virtual image. As evidence, the examiner points to the applicant's own patent US 5,971,540, column 2, lines 21-28 which states

It is important to recognize that when focus and parallax in a binocular optical device are adjusted together, the person looking through the device will always see a sharp image. If parallax is not adjusted as focus changes, the focus may be sharp on some objects but not so sharp on others. Because the human brain tries to compensate for this, the viewer may have **feelings of sickness** which is, at the least, distracting.

Applicant further argues that one of ordinary skill would not be motivated to combine Kato et al. with Kawamura or add the means for changing the magnification factor of AT-307 to Kato because such a device would not function properly. However, the applicant points to fig. 1

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of Kawamura while the rejection is based on figs. 17 and 18. Further, the applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Clearly adding zoom function as suggested by AT-307 to the system of Kato in view of Kawamura would provide the viewer with more flexibility in viewing the image with a broader range of magnifications.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Fineman whose telephone number is (571) 272-2313. The examiner can normally be reached on Monday - Friday 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


LAF

4 October 2006


MARK A. ROBINSON
PRIMARY EXAMINER